

I find the only damages to which the plaintiff should be awarded concern the actual detention suffered at Kandang Police Station beyond the time properly taken for check and investigation under Motor Regulations. This is quite short, and I consider \$50 sufficient.

Finally I have given anxious attention to the question of costs. The plaintiff has succeeded in his claim, but only to a fraction of the damages sought. I have considered the exercise of judicial discretion, and studied the principles (Annual Practice, 1946-47, 1440-2), coming eventually to the conclusion that in what is on record before me I am not justified in depriving the plaintiff of his costs.

I therefore give Judgment in favour of the plaintiff against the defendant for damages of \$50 and costs.

*Judgment for the plaintiff.*

#### V. E. A. MOHAIDEEN v. T. MOHAMED.

[App. Civ. Juris. (Whitton, J.) March 20, 1952]

[Kota Bharu — Civil Appeal No. 12 of 1951]

*Landlord and tenant — Control of Rent Ordinance, 1948, s. 12 — Non-payment of rent — Claim for possession — Breach of contract by claimant — Inherent power of Court to secure justice.*

The respondent let certain premises in Pasir Mas, Kelantan, to the appellant on an oral agreement that appellant shall pay \$35 rent and a further \$35 for the use of certain eating house furniture and in consideration of an eating house licence to be kept in force by the respondent for the appellant's benefit. After some time the respondent surrendered the licence and appellant stopped paying the further \$35. The respondent applied direct to the Sessions Court for an order for possession on the ground of rent being in arrears for more than 14 days. An order for possession was made, and the appellant appeals against this order.

Held, that (1) if plaintiff is to succeed in a suit of this nature he must establish non-payment of rent for a two-fold purpose; firstly, to satisfy the Court that it lies within its jurisdiction to grant the relief sought, and secondly, to satisfy it that he is entitled to the relief; (2) the money paid for the use of the eating house furniture was part of the rent and therefore since part of the rent had been in arrears the order for ejectment was rightly made. But the Court should exercise its inherent power to see that justice is done in such a case where the respondent is taking advantage of his breach of contract to claim possession.

CIVIL APPEAL from Sessions Court, Pasir Mas.

C. C. Goh for the appellant.

S. A. Lingam for the respondent.

*Cur. Adv. Vult.*

Whitton, J. :— This is an appeal against a decision, dated 5th September, 1951, of the President Sessions Court, Pasir Mas, ordering the appellant to surrender vacant possession of premises known as 43B Jalan Besar, Pasir Mas, to the respondent, and to pay

the respondent \$700 as arrears of rent in respect of the said premises.

I accept the findings of fact by the learned President. About six years ago the parties entered into an oral contract of which the terms were :—

(1) The appellant was to pay the respondent \$35 per month rent for premises 43 B Jalan Besar.

(2) The appellant was to pay the respondent a further \$35 per month for the use of certain eating house furniture which was on the premises and in consideration of the respondent keeping in force for the appellant's benefit an eating house licence the respondent held in his own name.

All apparently went well between the parties until about March 1950 in which month the respondent removed the licence and surrendered it to the Town Board authorities, an action the motive for which does not transpire from the evidence. From that time onwards the appellant paid only \$35 per month to the respondent, and ran what he described as a "ration goods shop and a cloth business" in the premises. The appellant states he asked the respondent to remove the furniture which had been used in connection with the eating house business, because with the cessation of that particular business it had become an incumbrance to him, but that the respondent did not accede to this request.

It was suggested at the hearing of the appeal that the learned President held there were two distinct contracts, one in respect of the renting of the premises, and the other covering the furniture and eating house licence. I do not from the record infer the President held there were two contracts. In any event I am quite satisfied there was only one. To my mind there is no doubt that the parties at the time they agreed upon the terms regarded them as all part of the one agreement. Nor do I think that the legal relationship they created between themselves constituted more than a single contract.

The first ground of appeal is that the President was wrong in holding the defendant, as the appellant then was, should begin. The plaintiff's claim was based on the allegation that the defendant was in arrears of rent for over 14 days. The defendant specifically denied this allegation in his Statement of Defence. Now by reason of section 12 of the Control of Rent Ordinance 1948 (M. U. Ord. 6 of 1948) no landlord can lawfully, without the permission of a Rent Assessment Board in writing, eject or apply to a Court to eject a tenant from his premises, subject to the proviso that this prohibition does not apply to ejectment for non-payment of rent where rent at a lawful rate has been in arrears for fourteen days. When, as in the present case, the landlord relies on the proviso to come direct to the Courts without going

first to the Rent Board, and his claim that rent has been in arrears is disputed, it seems to me the first point on which the Court must be satisfied is that the landlord has, *prima facie* at least, established that his case comes within the proviso. For, as I see the matter, if plaintiff is to succeed in a suit of this nature he must establish non-payment of rent where the rent at a lawful rate has been in arrears for fourteen days for a two-fold purpose; firstly to satisfy the Court that it lies within its jurisdiction to grant the relief sought, and secondly to satisfy it that he is entitled to the relief. In practice it would, no doubt, not be necessary to prove the same matter twice, but I consider it is important to bear the distinction in mind from the standpoint of procedure. I think then in the circumstances the learned President should not have required the defendant to begin. The main point is, however, whether at any stage of the proceedings in the Sessions Court the respondent did prove that rent at a lawful rate had been in arrears for fourteen days. The facts as far as payment was concerned are clear. For the first four years or so the contract was in force the appellant had paid \$70 per month; from March 1950 onwards he had paid only \$35 per month. Under section 2 of the Ordinance rent is defined as "including any sum paid as rent or hire for the use of furniture where premises are let furnished or where premises are let and the furniture therein is hired by the landlord to the tenant". It follows, in my opinion, that the money paid for the use of the eating house furniture was part of the rent. The rent payable by the appellant was, therefore, \$35 per month plus an unascertained (and probably never determined) proportion of the further \$35 per month. There was no Rent Restriction legislation in Kelantan before the middle of 1947 at the earliest (*vide* M. U. Ordinance No. 22 of 1947), so I conclude the rent in question was at a lawful rate. Counsel for the appellant argued that it had not been proved that the rent charged for the furniture complied with section 3(2) of the Ordinance, but I do not think there is substance in this point. As I have indicated there is nothing to show that the parties ever worked out between themselves what proportion of the further \$35 per month was to be paid in respect of the furniture and what in respect of the advantages arising out of the eating house licence. I think it would be pedantic to maintain that an agreement of this nature, entered into in 1946 by the parties with complete freedom and not on the face of it harsh, contravened the provisions of legislation passed in 1948 to check profiteering in furnished premises, merely because it had not been specifically established that the proportion of the \$35 payable for the furniture was within the prescribed limits. It

follows, therefore, since part of the rent had been in arrears since March 1950 that the respondent's application for ejectment was in order.

A further ground of appeal was based on the argument that there were two separate contracts. As I have mentioned, I do not accept the view there were two contracts.

The next two grounds of appeal dealt respectively with the fact the respondent did not try to get the licence transferred to his own name and with an allegation that due notice to terminate the tenancy had not been given. Counsel for the appellant conceded that the first point was not very important, a view with which I agree, and abandoned the second at the hearing of the appeal. He argued, however, that while it was not disputed that due notice had been given in the first place, once the respondent had omitted to comply with that notice he became a statutory tenant, and entitled to further notice. It is plain from section 15 of the Ordinance that something more than omission to comply with the notice to quit was necessary to make the respondent a statutory tenant, and I do not think that further element was shown to exist.

The final ground of appeal was that the learned President should have exercised "the equitable jurisdiction of the Court to meet the ends of justice by dismissing the plaintiff's claim for possession as he had expressed his sympathies for the defendant and his reluctance to find for the plaintiff". It is plain that the President's sympathies were with the defendant and that it was only because on the facts he considered no alternative was open to him but to find for the plaintiff he reached the decision he did. Although he has not set forth his opinions on the law which lead him to this conclusion, I think it may be surmised that he reasoned on the following lines—the plaintiff had established his right to seek ejectment from the Court without reference to the Rent Assessment Board; the limitations on recovery of possession imposed by the Ordinance therefore no longer applied; the issue had become simply a claim for ejectment on the ground that rent was in arrears, and, as the plaintiff had established this was so, he was entitled to succeed. If this was the learned President's line of reasoning I concede that there is something to be said for it. It seems to me, however, that it was open to him to take a broader view of the matter. If he had been trying this case in England, granted identical circumstances, the position would have been governed by section 3 of the "Rent and Mortgage Interests Restrictions (Amendment) Act," 1933, which provides that "No order or ejectment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the

ejection of a tenant therefrom shall be made or given unless the Court considers it reasonable to make such an order or give such a judgment, and....." I appreciate that there is no corresponding provision in our legislation, but I feel that our Courts are not without a discretion in the matter. It would be unfortunate indeed if a landlord could, as the landlord seeks to do in the present case, avail himself of a breach of contract on his own part to secure for himself, on the strength of what in reality is only technically an arrears of payment of rent, recovery of possession of premises which ordinarily he could not recover without submitting his case to the Rent Assessment Board. If it is open to argument that such a discretion does not exist under our Control of Rent Ordinance, 1948, it seems to me that it is a case in which the learned President should have exercised the inherent power of the Court—in the words of section 597 of the Civil Procedure Code, F.M.S. (Cap. 7) — "to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court". I am aware that the F.M.S. Civil Procedure Code does not apply to Kelantan, but it has been a recognised practice to follow the provisions of the F.M.S. Code where, as in the present instance, the Kelantan Enactment is silent. In any event since the power is inherent statutory sanction is not essential. In the circumstances I think the learned President should have decided the claim for ejection in favour of the appellant.

As regards the claim for arrears of rent I am satisfied the appellant owes something to the respondent, but I cannot accept the view that it is \$560, the sum claimed by the respondent and awarded by the President. It is clear that such a claim ignores the fact that portion of the sum of \$70 per month paid originally was in respect of the licence, although what the portion was remains to be ascertained. I do not think there is any obligation on me to try and disentangle this point. Accordingly I also set aside the learned President's decree for payment of arrears of rent, but the respondent will be at liberty to take action afresh for the recovery of the arrears of rent due to him since 1st March 1950 if he so wishes.

I accordingly allow this appeal, and set aside the Order of the President of the Sessions Court. I make an Order for costs in favour of the appellant.

*Appeal allowed.*

## STEWART v. STEWART.

[Special Case (Spenser Wilkinson, J.) August 26, 1952]  
[Penang — Sessions Court Criminal Case No. 1126 of 1952]

*Maintenance — Whether a criminal cause or matter — Special case stated — Right of appeal.*

This was a special case stated by the President of the Sessions Court in Penang under section 317 of the Criminal Procedure Code relating to the confirmation of a Provisional Maintenance Order made against the respondent by a Police Court in Singapore.

Held, that (1) an application by a wife for maintenance for herself and her children or an application by a husband to vary the amount ordered to be paid by way of maintenance is a civil matter; (2) although there is a right of appeal under section 50(2) of the Courts Ordinance 1948, section 317 of the Criminal Procedure Code has no application and there is no provision for a Sessions Court to state a case in a civil matter.

*Cases referred to:—*

- (1) *Chew Cheng Swee v. Chan Chye Neo* (1932) M.L.J. 5.
- (2) *Kok Heng Chow v. Lay Mee Yin* (1948) M.L.J. 157.
- (3) *Wong Eng Fook v. Ho Kiat Moi* (1949) M.L.J. 96.

SPECIAL CASE RESERVED for consideration of the High Court under section 317 of the Criminal Procedure Code (Cap. 21).

*C. M. Sheridan* (D.P.P.) for the Crown.

*O. L. Phipps* for the respondent.

**Spenser Wilkinson, J. :** — This was a special case stated by the President of the Sessions Court under section 317 of the Criminal Procedure Code relating to the confirmation of a Provisional Maintenance Order made against the respondent by a Police Court in Singapore.

At the outset the learned Deputy Public Prosecutor took the preliminary objection that a proceeding relating to the maintenance of wives and children is a civil matter and that an appeal from a decision of a Sessions Court or a Magistrates' Court in any such proceeding is a civil appeal.

In the case of *Chew Cheng Swee v. Chan Chye Neo*<sup>(1)</sup> it was decided by a strong Court of three Judges that no appeal lay from the decision of a District Court of the Straits Settlements refusing to vary the amount of maintenance ordered to be paid by a husband to a wife, because this was not a criminal cause or matter. It was there held that the mere obtaining of an order to pay or a variation of the amount to be paid is a civil stage of the proceedings, although the subsequent enforcement of an order may